

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE NUCLEAR REGULATORY COMMISSION

STATE OF OHIO
DEPARTMENT OF REVENUE
DIVISION OF TAXES

In the Matter of)
)
OHIO EDISON COMPANY) Docket No. 50-440A
)
(Perry Nuclear Power Plant,)
Unit 1))

REQUEST FOR A HEARING WITH RESPECT TO THE DENIAL OF
THE APPLICATION TO AMEND THE PERRY OPERATING LICENSE
TO SUSPEND THE ANTITRUST CONDITIONS INsofar
AS THEY APPLY TO OHIO EDISON COMPANY

Pursuant to the Notice of Denial of Applications for Amend-
ments to Facility Operating Licenses and Opportunity for Hearing,
56 Fed. Reg. 20057 (May 1, 1991), Ohio Edison Company ("OE")
hereby requests a hearing with respect to the denial of OE's
Application to amend the Perry operating license to suspend the
antitrust conditions insofar as they apply to OE, dated September
18, 1987.

Specifically, OE requests a hearing on the following five
issues:

- (1) Does the Perry Nuclear Power Plant afford OE
a competitive advantage when Perry's actual
costs are such that the plant does not pro-
vide OE a lower average cost of bulk power
supply than would non-nuclear generation
options OE could have exercised in the same
time frame (see 10 C.F.R. Part 50, App. L,
§§ 11.11, 11.12)?

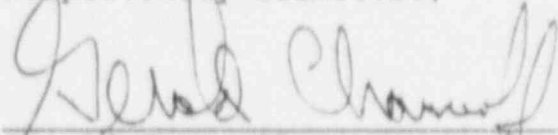
- (2) If the Perry Nuclear Power Plant does not afford OE a competitive advantage, can OE's ownership share of Perry "create or maintain a situation inconsistent with the antitrust laws" (Section 105c(5) of the Atomic Energy Act, as amended) such that NRC is authorized to impose or retain license conditions?
- (3) If the Perry Nuclear Power Plant does not afford OE a lower average cost of bulk power supply than would non-nuclear generation options OE could have exercised in the same time frame, does imposition or retention of license conditions under Section 105c of the Atomic Energy Act, as amended, deny OE equal protection and due process under the Fifth Amendment of the U.S. Constitution?

Preliminary to the determination of the issues set forth above, and before consideration of the recommendations of the NRC and Department of Justice ("DOJ") staffs, OE requests that the following issues be resolved:

- (4) Did the 1988 legislative proposal by Senator Howard M. Metzenbaum providing that "[t]he Nuclear Regulatory Commission shall not suspend or modify the application of any anti-trust provision contained in the Perry operating license No. NPF-58, as such provision applies to any licensee of the Perry Nuclear Powerplant, Unit 1," the debate thereon in the Senate on March 29, 1988, as reflected in the Congressional Record of that date, pp. S 3257-59, and any related communications between the NRC staff and the legislative branch, compromise the actual or apparent impartiality of the staffs of the NRC and the DOJ in connection with their consideration of OE's application and, if so, should the Licensing Board and the Nuclear Regulatory Commissioners give no weight to the recommendations of the NRC and DOJ staffs?

- (5) Were the NRC or DOJ staffs predisposed to deny OE's application, as suggested by Senator J. Bennett Johnston's statements in the Congressional Record, 134 Cong. Rec. S 3258, 3259 (March 29, 1988), regarding "a strong rumor" that "the NRC has indicated that they have no intention of approving this application," and, if so, should the Licensing Board and the Nuclear Regulatory Commissioners give no weight to the recommendations of the NRC and DOJ staffs?

Respectfully submitted,



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Dated: May 31, 1991

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CERTIFICATE OF SERVICE

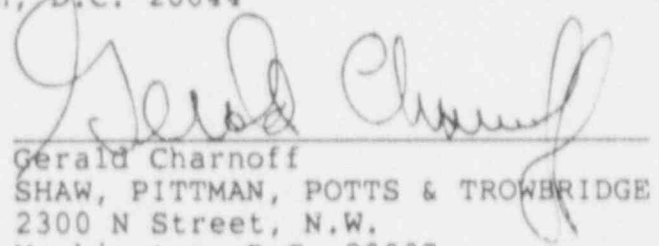
OFFICE OF THE CLERK
U.S. DISTRICT COURT
WASHINGTON, D.C.

I HEREBY CERTIFY that a copy of the foregoing Request for a Hearing with Respect to the Denial of the Application to Amend the Perry Operating License to Suspend the Antitrust Conditions Insofar as They Apply to Ohio Edison Company was mailed first class, postage prepaid, this 31st day of May, 1991, to:

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